NOTICE OF MEETING OF THE
SOUTH DAKOTA RAILROAD BOARD

You will take notice that the South Dakota Railroad Board will have a meeting on Wednesday, January 20, 2016 at 11:00 a.m. The public may listen to and participate in the proceeding in the Transportation Commission Room 200 of the South Dakota Department of Transportation, 700 E. Broadway Avenue, Pierre, South Dakota. **The InterCall dial-in number is 1-866-410-8397. The conference code is 1289182255.**

Darin P. Bergquist, Secretary
Department of Transportation

Notice is further given to individuals with disabilities that this board meeting is being held in a physically accessible place. Any individuals with disabilities who will require a reasonable accommodation in order to participate in the board meeting should submit a request to the department's ADA Coordinator at 605-773-3251 or 1-800-877-1113 (Telecommunication Relay Services for the Deaf). Please request the accommodations no later than **2 business days prior to the meeting** in order to ensure accommodations are available.

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF HUGHES)

AFFIDAVIT

I, Darin P. Bergquist, Secretary of the Department of Transportation, being first duly sworn, do hereby state that the above Notice of Meeting of the South Dakota Railroad Board will be posted on Monday, January 18, 2016 in the entryway of the Becker-Hansen Building at 700 East Broadway Avenue, Pierre, South Dakota.

Darin P. Bergquist, Secretary
Department of Transportation

Subscribed and sworn to before me a Notary Public this 14th day of January, 2016.

Wanda Amundson
My Commission Expires
June 7, 2016

Notary Public Wanda Amundson

My Commission Expires:

WANDA AMUNDSON NOTARY SEAL PUBLIC SOUTH DAKOTA

SOUTH DAKOTA STATE RAILROAD BOARD MEETING
BECKER-HANSEN BUILDING
COMMISSION BOARDROOM
JANUARY 20, 2016 @ 11:00 A.M.

AGENDA

WEDNESDAY
JANUARY 20, 2016

11:00 A.M. **Todd Yeaton, Chair**

- Call to Order
- Approve the minutes of meeting on December 16, 2015 **1**

11:15 A.M. **Bruce Lindholm, Office of Air, Rail, and Transit**

- Consideration of Marshall County RRA lease and sub-lease agreements **2**
- Consideration of bid opening of surplus of railroad bridge timber **3**
- Consideration of Reliance Rail LLC option to lease, siding removal, and lease **4**
- Consideration of Amendment #3 to A & R Land Services, Inc. contract #910944 **5**
- Consideration of Dakota Southern Railway Company's in-kind match agreement
- Consideration of Napa to Platte lease extension
- Update on MRC line project
- Update on TIGER 2014 RCP&E project

Adjourn

To participate by telephone, please dial **1-866-410-8397** and enter code **1289182255** to be logged into the meeting

Notice is further given to individuals with disabilities that this board meeting is being held in a physically accessible place. Any individuals with disabilities who will require a reasonable accommodation in order to participate in the board meeting should submit a request to the department's ADA Coordinator at 605 -773-3540 or 1-800-877-1113 (Telecommunication Relay Services for the Deaf). Please request the accommodations no later than **2 business days prior to the meeting** in order to ensure accommodations are available.

Meeting agendas are now posted online at Boards and Commissions site
http://boardsandcommissions.sd.gov/

SOUTH DAKOTA STATE RAILROAD BOARD MEETING
December 16, 2015, 2015 @ 11:00 AM
DOT Building – Room 202C Teleconference
Pierre, South Dakota

MEMBERS: Todd Yeaton, Chair via phone
Carl Anderson via phone
Jeff Burket via phone
Jerry Cope via phone
Sheldon Cotton via phone
Gary Doering via phone

PHONE: Alex Huff and Jack Parliament

STAFF: Darin Bergquist, Bruce Lindholm, Misty Siedschlaw, Bill Nevin, Bonnie Olson, Tessa Wenner, and Lynn Kennison

Agenda Items:

Call to order

- 1) Approve the minutes of meeting on November 18, 2015
- 2) Consideration of Slover & Loftus law firm contract
- 3) Consideration of Plymouth County, Iowa conservation easement
- 4) Consideration of the revision of paragraph 3 from Guideline No.3 haying, grazing, and farming State owned land
- 5) Update on MRC line project

Chair Yeaton called the regular meeting of the South Dakota State Railroad Board (the "Board") to order at 11:00 AM. with a quorum present (via phone).

****

1) Motion by Anderson, second by Cotton, to approve the November 18, 2015, Railroad Board meeting minutes.

   Motion carried by roll call vote (5 aye, 1 abstain [Cope]).

Darin Bergquist, Secretary of the South Dakota Department of Transportation

2) Consideration of Slover & Loftus law firm contract

   Secretary Bergquist provided the Board with a brief explanation of the Department's request to enter into an agreement with Slover & Loftus LLC. The Department previously entered into an agreement with Slover & Loftus LLC to provide legal

DRAFT

services and represent the State of South Dakota regarding matters related to the sale of the Canadian Pacific line, which included proceedings before the Surface Transportation Board (STB). The current contract expires on December 31, 2015. The Department is requesting to enter into a new agreement with Slover & Loftus LLC to provide legal counsel for services related to filings with the STB for the Napa-Platte rail line.

Cope entered the meeting during the discussion at 11:11 a.m. Chair Yeaton noted that since Cope missed some of the discussion, he would be unable to vote

Motion by Burket, second by Cotton to direct the Secretary of the South Dakota Department of Transportation, or his designee, to execute all documents necessary to enter into an agreement with Slover & Loftus LLC to provide professional legal services for matters relating to the Napa-Platte rail line.

Motion carried by roll call vote (5 aye, 1 abstain [Cope]).

Bruce Lindholm, Office of Air, Rail, and Transit

3) Consideration of Plymouth County, Iowa, conservation easement

Lindholm provided the Board with the details of Plymouth County, Iowa, permanent conservation easement. The easement is necessary to comply with federal wetland mitigation requirements.

Motion by Cope, second by Anderson to direct the Department to enter into a permanent conservation easement with Plymouth County, Iowa, to create a wetland on property owned by Plymouth County, Iowa.

Motion carried by roll call vote (all aye)

4) Consideration of the revision of paragraph 3 from Guideline 3 Haying, Grazing and Farming State owned land

Lindholm addressed the Board and requested the Board to approve amending property management guideline No. 3 to eliminate the requirement for an agriculture permit to be granted to a party other than the adjoining landowner only upon approval of the adjoining landowner, and to allow the Department to issue permits for agricultural purposes to a permit applicant on a first come first serve basis.

Motion by Anderson, second by Cotton to approve revising paragraph 3 of property management guideline No. 3 to read, "An agricultural permit will be granted to a permit applicant on a first come first serve basis."

DRAFT

Motion carried by roll call vote (all aye).

****

5) Lindholm provided the Board with an update on the MRC project. 13 miles of steel has been placed from Reliance towards Kennebec. The Chamberlain to Reliance bridges will be completed by January 1, 2016. The culverts are .done. The rip rap still needs to be placed under the bridges, but will need to wait until the ground freezes. Switch material has started to arrive and should be here by Friday, December 18, 2015. The last couple truckloads of bars should be here this week. The Department is working on the contract bid documents for salvage of the bridge lumber the Board previously approved.

The meeting was adjourned at 11:34 a.m. upon a motion for adjournment by Cope, seconded by Burket.

Next meeting is scheduled for January 20, 2016, at 11:00 a.m.

DRAFT

Department of Transportation

Division of Finance & Management
Air, Rail and Transit
700 East Broadway Avenue
Pierre, South Dakota 57501-2586
OFFICE: 605/773-3574
FAX: 605/773-3921

MEMORANDUM

Date: January 14, 2016

To: South Dakota State Railroad Board

From: Darin Bergquist, Secretary, Department of Transportation

Subject: Marshall County lease and sublease

The Board approved the Marshal County Regional Railroad Authority's lease and sublease agreements at its October 7, 2015, meeting. Subsequent to that meeting, questions arose regarding the payment of rent in relation to possible car storage revenue. The subleasee, DMVW, has no current plans to store cars. Section 19 of the lease agreement and section section18 of the sublease agreement were changed to allow for a renegotiation of the rent in the event car storage occurs. The previously approved lease and sub lease agreements had an effective date of January 1, 2015. The Department would like to change the effective date to January 1, 2016, and change the payment section so that the first rental payment under the new lease and sublease agreements would not be due until 2017.

As a reminder, the current lease and sublease agreements are in effect until 2017, the lease was changed to allow for a longer term and to come into conformance with our other rail leases. When executed, the new lease and sublease agreements, by their terms, will supersede the current leases.

STATE OF SOUTH DAKOTA
DEPARTMENT OF TRANSPORTATION
LEASE AGREEMENT

This Lease Agreement ("Agreement") is made and entered into by and between the State of South Dakota, acting by and through its Department of Transportation, referred to in this Agreement as the "State," and the Marshall County Regional Railroad Authority, referred to in this Agreement as the "Authority." This Agreement is effective beginning January 1, 2016.

BACKGROUND:

1. The State is the owner of railroad property, including mainline tracks, sidings, and extra-width property and facilities between Milepost 115.08 near Aberdeen, South Dakota, and Milepost 43.17 at Geneseo Junction, North Dakota, and including an additional 275 feet of track beyond Milepost 43.17 at Geneseo Junction referred to as "The Geneseo Junction Connection," and the "Britton Spur" between Britton, South Dakota and the connection with the mainline at Jarrett Junction, South Dakota, a total distance of approximately 76.26 miles in Brown and Marshall Counties, South Dakota and Sargent County, North Dakota, as shown on the map attached to this Agreement as Exhibit A, and collectively referred to in this Agreement as the "Rail Facilities."
2. Pursuant to the Agreement for Donation of Certain Assets, Rights, and Obligations between The Burlington Northern and Santa Fe Railway Company and the South Dakota Railroad Authority dated June 15, 2001, the State acquired the portion of the Rail Facilities between Milepost 115.08 near Aberdeen, South Dakota, and Milepost 65.60 near Kidder, South Dakota (the "Britton Line").
3. Pursuant to the Sale Agreement between Rutland Line, Inc. and the South Dakota Rail Authority dated June 4, 2002 (the "Sale Agreement"), the State acquired the portion of the Rail Facilities between Milepost 43.17 at Geneseo Junction, North Dakota and Milepost 65.57 (rounded to Milepost 65.60) at the North Dakota/South Dakota border (the Rutland Line").
4. The State and the Authority entered into a Lease Agreement on August 8, 2002, which was amended on November 22, 2005, which Lease Agreement, as amended, was extended by oral agreement of the parties, and which was superseded by the Lease Agreement between the parties dated March 16, 2007.
5. The parties now wish to enter into this Agreement for the lease of the Rail Facilities by the Authority from the State on the terms and conditions as stated in this Agreement.
6. The State has received the approval of the South Dakota State Railroad Board (the "Railroad Board") and the written consent of the Governor to enter into this Agreement for railroad purposes.
7. With the consent of the State, the Authority intends to sublease the Rail Facilities to the Dakota, Missouri Valley and Western Railroad, Inc. ("DMVW"), referred to in this Agreement as the "Operator," pursuant to a sublease agreement as provided in this Agreement.

THE STATE AND THE AUTHORITY MUTUALLY AGREE AS FOLLOWS:

1. Purpose. The State leases the Rail Facilities to the Authority, subject to the limitations set forth in this Agreement including, but not limited to, the right of Rutland Line, Inc. and its successors or assigns in Section 2(d) and (e) of the Sale Agreement to elect to provide rail freight service along the Rutland Line for traffic originating or terminating along the Rutland Line and excluding from such lease any property which is currently subject to a lease by the State to a third party. All property leased to third parties is identified in records on file at the South Dakota Department of Transportation, 700 East Broadway Avenue, Pierre, South Dakota 57501-2586. In addition, the State may exclude additional property at any time during the term of this Agreement with the Authority's consent. The parties recognize and agree that this Agreement is for railroad purposes. Consequently, the Authority will not unreasonably withhold its consent to exclude property not necessary for railroad purposes.
2. Condition of the Rail Facilities. The Authority understands and agrees that the Rail Facilities are leased in "AS IS" condition. The State will have no responsibility to make any improvement,

DOT Legal: _____

modification, rehabilitation, maintenance, or other change to the Rail Facilities for the purposes of this Agreement.

3. Representations and Warranties. The Authority accepts the Rail Facilities "AS IS, WHERE IS" and "WITH ALL FAULTS." By signing this Agreement, the Authority acknowledges that the Authority and the Operator have inspected the Rail Facilities, including all improvements and structures. The Authority agrees, and will obtain the agreement of the Operator in any sublease with the Operator, and the agreement of any other operator or user of all or any portion of the Rail Facilities in any agreement with such operator, that no representations have been made by the State or relied upon by the Authority concerning the state or condition of the Rail Facilities, and neither the Authority nor the Operator nor any such other operator or user are relying on any representation made by the State concerning the state or condition of the Rail Facilities.

4. Operating Rights. The State permits the Authority to use any and all of the State's rights and licenses in and to the Rail Facilities to the extent necessary for the purpose of providing rail freight service, passenger service, and railcar storage. Except as authorized in writing by the State, passenger service will be limited to recreational motorcar use by individuals and organizations. If individual or organizational motorcar clubs are allowed by the Authority or the Operator to utilize any portion of the Rail Facilities under lease in this Agreement, it will be the responsibility of the Authority and the Operator to obtain a certificate of insurance naming the State, the Authority, the Operator and any other operator or user of the Rail Facilities as additional insureds, prior to any motorcar event; and, further, the Authority and the Operator will obtain from the individual recreational motorcar enthusiast or organization, as the case may be, an indemnification agreement to be executed by the person or entity in charge of the motorcar event, indemnifying the State and the Authority from any claim or liability arising out of the event, and will provide copies of said indemnification agreements to the State prior to any motorcar travel on the Rail Facilities. The rights granted to the Authority under this Agreement relate solely to the provision of rail freight service, railcar storage and authorized passenger service on the Rail Facilities. The Authority will not use or sublease the Rail Facilities for any other purpose without the State's prior written authorization. The Authority will have use of the Claremont Storage Shed and appropriate station grounds for maintenance and operational requirements subject to approval from the State.

   The Authority will have the exclusive right to provide rail freight service on/over the entire Rail Facilities for any freight traffic that originates or terminates at any point along the Britton Line. The Authority will have a non-exclusive right to provide rail freight service on/over the entire Rail Facilities for any freight traffic that originates or terminates at any point along the Rutland Line. The Authority will have a non-exclusive right to provide rail freight service on/over the entire Rail Facilities for any freight traffic that does not originate or terminate at any point along the entire Rail Facilities.

   It is further understood that the State may grant unrestricted trackage rights on/over all or a portion of the Rail Facilities to a third party carrier for any freight traffic that does not originate or terminate at any point along the entire Rail Facilities, and may grant local trackage rights to a third party carrier to serve a new industry that locates along the Rail Facilities.

   It is further understood that the Authority or a third-party carrier appointed by the State may utilize the State's interchange/trackage rights via Aberdeen, South Dakota and Geneseo Junction, North Dakota, if any, for furtherance of said rail freight traffic beyond the Rail Facilities. The Authority or said third-party rail carrier may not exceed or otherwise violate the terms of the State's interchange/trackage rights.

   Any rail traffic moving via any segment of the South Dakota Owned Rail System or the Rapid City, Pierre, & Eastern Railroad, Inc., using the Geneseo Line Junction Gateway as access to the Canadian Pacific Rail System or as access to the BNSF Railway Company ("BNSF"), formerly The Burlington Northern and Santa Fe Railway Company, will have terms and conditions negotiated between the Authority or the Operator or operators and the carriers involved for those movements covering rates, routes and divisions. Additionally, an appropriate and commercially reasonable joint trackage rights agreement will be negotiated between the Authority, the Operator, the South Dakota

DOT Legal: _____

Department of Transportation (Office of Air, Rail, and Transit) and any third party carrier granted trackage rights on all or any portion of the Rail Facilities covering, among other items, joint line definition, per train-mile payment to the Operator or the Authority and the State, operations, maintenance, derailment expenses, liability allocation and claim and damage settlement.

The Authority, the Operator, or any third party carrier with which it connects will have the non-exclusive authority to establish and publish rates subject to any legal requirements of the Surface Transportation Board ("STB") or other regulatory requirements, and will bill and collect its own charges for all rail transportation over the Rail Facilities.

The Authority or the Operator will provide railcars for any freight traffic that originates or terminates at any point along the Britton Line. The Authority or the Operator will provide railcars for any freight traffic that the Authority or the Operator originates or terminates at any point along the Rutland Line.

It is in the State's best interest that the Rail Facilities be utilized by as many shippers and receivers as possible for the shipment and receipt of commodities via rail. Upon the request of a rail shipper or a prospective rail shipper, the Authority will require the Operator to sublease to such shipper or prospective shipper, for a term not to exceed 10 years in duration, a portion of the property comprising the Rail Facilities upon which such shipper or prospective shipper, at its cost and expense, will construct a track or tracks for its use. The sublease agreement will be subject to the prior approval of the State. Also, the Authority will ensure that the Operator will require such shipper or prospective shipper to indemnify the State from suits, actions and claims on the same basis as set forth in Section 9 below. The sublease agreement will also provide that in the event that no track is constructed on the subleased parcel within two (2) years of the date of the sublease agreement, the sublease will automatically terminate.

In any sublease with the Operator, the Authority will require that the Operator agree that all freight traffic that either originates or terminates at any point on, along, connected to, or which may become connected to the Rutland Line will be interchanged only to the Red River Valley & Western Railroad Company ("RRVW"), as successor in interest to Rutland Line, Inc., at Geneseo Junction, North Dakota, for furtherance beyond by RRVW or its successors or assigns for interchange with BNSF. The reference to "any point on, along, connected to, or which may become connected to, the Rutland Line" will mean and include existing or future rail-served facilities adjacent, connected to, or capable of connection to, the Rutland Line by spur track, side track, industry track or branchline extending directly off of the Rutland Line, provided however, that any point on the segment of the Rail Facilities south of Milepost 65.57 that is not otherwise connected to the Rutland Line by spur, side, or industry track or branchline, will not be included as a point "connected" to the Rutland Line for purposes of this section, it being understood that nothing in this Agreement or any sublease with the Operator will preclude RRVW or BNSF from establishing, subject to any regulatory approval, the rates either charges for any rail freight service provided by them beyond the Rutland Line for traffic that either originates or terminates at any point on, along, connected to, or which may become connected to the Rutland Line.

5. Provision of Operations. The Authority will obtain the State's advance approval, in writing, of any contract the Authority intends to enter into with an operator to provide rail freight service, passenger service, or railcar storage over the Rail Facilities. Any such approved contract must be made subject to all of the terms, conditions, and limitations contained in this Agreement.

6. Administration of Rail Facilities. Notwithstanding any provision of this Agreement, the State will retain sole responsibility for the management of all State-owned facilities and equipment located on the Rail Facilities not required for rail purposes. The State may grant leases, easements, licenses, and all other similar property rights on the Rail Facilities for non-rail purposes, including, but not limited to, placement on the Rail Facilities of utilities, fiber optic cables, pipelines, at-grade crossings and grade separations, and other non-rail related facilities and businesses, provided that such leases, easements, and licenses do not unreasonably interfere with the Authority's or the Operator's rail operations. The State will be entitled to all revenues derived from such grants of property rights.

DOT Legal: _____

7. Government Approval. The Authority and the Operator, at no cost to the State, will prepare and file such documents as may be required to secure approval or exemption from the STB for the lease and operation of the Rail Facilities sufficiently, in advance of the Effective Date of this Agreement, for such approval or exemption to become effective on or before the Effective Date. The Authority and the Operator will permit the State to review prior to filing all documents proposed by the Authority and the Operator to be filed with the STB for such approval or exemption.

8. Common Carrier Obligations. The Authority or the Operator will assume all common carrier obligations related to the operation of the Rail Facilities during the term of this Agreement.

9. Liability of Authority. The Authority and the Operator will indemnify the State, its subdivisions and representatives, officers, employees, successors, and assigns, from all suits, actions, or claims of any character pertaining to any death, injury, or damage received or sustained by any person or persons whomsoever (including, but not limited to, State employees), and any property whatsoever (including, but not limited to, State-owned property), which arises out of or as a result of entering into this Agreement, or the rail siding leases referenced in Section 4, except when such death, injury, or damage is caused by the sole negligence of the State.

10. Laws to be Observed. The Authority and the Operator will keep fully informed of all federal, state, and local laws, rules, ordinances, regulations, injunctions, and all final orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any way affect the performance of this Agreement, including without limitation any laws, rules, ordinances, regulations, orders, or decrees identified in this Agreement. The Authority and the Operator will at all times observe and comply with all such laws, rules, ordinances, regulations, and all final orders and decrees. The Authority and the Operator will indemnify the State and their respective officers, employees, and representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, injunction, or final order or decree.

11. Insurance. The Authority will require the Operator to maintain a Commercial General form of insurance covering liability in connection with any of the Operator's activities and operations on or near the Rail Facilities including, but not limited to, Public Liability, Personal Injury, and Property Damage; Federal Employers Liability Act Liability (or, if Workers' Compensation applies, Workers' Compensation coverage as required, or as optional, under applicable state law); said insurance must contain a specific waiver of the insurance company's subrogation rights against the State and RRVW; Bill of Lading and Foreign Rolling Stock Liability; and Contractual Liability; with such limits (consistent with the terms set forth below), deductibles and exclusions as the State may agree are satisfactory, provided however, that: (i) such limits will not be less than $5 million per occurrence; and $10 million in the aggregate; and (ii) policy terms will not exclude or limit coverage where activities or operations are on or near railroad tracks. The State and RRVW must be named as additional insureds on such liability insurance policies. Any coverage afforded to the State and RRVW as additional insureds will apply as primary insurance of the State and RRVW, and will not be deemed to be excess to any insurance issued in the name of the State or RRVW. The Authority will require the Operator to obtain such liability insurance from an insurance company licensed to do business in the State of South Dakota and the State of North Dakota, and possessing a current Best's Insurance Guide Rating of A and Class X, or better.

    The Authority or the Operator will furnish to the State and RRVW, a Certificate or Certificates of Insurance satisfactory to the State and RRVW certifying the issuance to the Operator of the policies of insurance providing the types of insurance and limits of liability prescribed above, and stating that the State and RRVW will be given not less than thirty (30) days' written notice by U.S. Certified mail (postage prepaid), prior to any material change, substitution, or cancellation of such insurance policies in advance of normal expiration dates. Cancellation or expiration of any such insurance policies will not limit or otherwise preclude the State from recovery for any liability arising under this Agreement.

    The Authority or the Operator will provide the State with evidence of the liability insurance coverage required by this Agreement before the Operator operates along the Rail Facilities. If the Authority or the Operator do not maintain the required insurance coverage, the State may immediately terminate this Agreement, without notice to the Authority or the Operator and without opportunity to cure such

DOT Legal: _____

default. The Authority and the Operator will supply the State with copies of their insurance policies and any amendments within ten (10) days of receiving a request for the same from the State. The Authority acknowledges and will obtain the acknowledgment of the Operator in any sublease with the Operator, that the purchase of insurance as required by this section will not in any way limit the liability of the Authority or the Operator or any other sublessee or operator. In addition, the Authority or the Operator will supply RRVW with copies of its insurance policies and any amendments on January 1 of each year.

12. Assignment. The Authority will not assign its rights or delegate its duties under this Agreement or any part of this Agreement, without the State's prior written consent. An approved assignment, including assignments occurring through operator contracts, will not relieve the Authority of its primary responsibility to the State.

13. Amendment. No term or provision of this Agreement may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge, or termination is sought; provided however, when an emergency situation arises, changes in this Agreement may be made orally by authorized representatives of both parties by mutual agreement subject to immediate confirmation by telefacsimile or other delivered writing.

14. State Inspection. The State or its duly authorized representative, upon reasonable notice to the Authority, reserves the right at all times to perform any and all inspections over and across the Rail Facilities, including rail trackage, for the purpose of verifying compliance with the terms and conditions of this Agreement and any agreement between the Authority and the Operator relating to the Rail Facilities. The Authority will correct any deficiency noted during each rail inspection within the time frames set by the State. The State's inspection or failure to conduct such inspections will not relieve the Authority and any operators of the responsibility to properly maintain the Rail Facilities.

15. Responsibility for Rehabilitation. The State will have no responsibility for rehabilitating the Rail Facilities.

16. Additions to Rail Facilities. The term "Addition(s)" as used in this Agreement means capital improvements which are in addition to the Rail Facilities. The State grants to the Authority the right to make such Additions to the Rail Facilities as the Authority may require, at the Authority's sole expense, to permit rail freight service, passenger service, or railcar storage on the Rail Facilities as permitted under this Agreement. The Authority or the Operator will own and have the right to remove any Addition outside of the actual mainline and siding track structures, if the Addition can be removed without causing the Rail Facilities to be less serviceable than before the Addition was made. Any Addition which cannot be removed without diminishing serviceability will become the State's property and will become a part of the Rail Facilities. Under no circumstances may any Addition placed into the actual mainline or siding track structures be removed at the termination of this Agreement; such Addition will remain the property of the State.

17. Jarrett Junction Connection. The Authority will be responsible, at its initial cost and expense, subject to reimbursement by the State as provided herein, for the cost of constructing a track connection in the southwest quadrant of the intersection of the spur track from Britton, South Dakota and the mainline of the Britton Line at Jarrett Junction, South Dakota. Such track construction will be carried out in accordance with the plans, specifications, drawings and budget (the "Approved Plans") as agreed upon by the State, the Authority and the Operator, and will be completed not later than December 31, 2016. The Authority will be responsible, at its sole cost and expense, for acquiring the necessary right-of-way for such track connection. Upon certification by the State of the completion of the construction of such track connection in accordance with the Approved Plans, the State will reimburse the Authority in an amount not to exceed Six Hundred Thousand Dollars ($600,000.00) for the cost of constructing such track connection exclusive of the cost of acquiring the right-of-way. The Authority may contract with the Operator to construct such track connection in accordance with the Approved Plans, provided however, that the Authority will remain responsible hereunder for completing such construction. The Authority will be responsible for providing to the State such supporting documentation as required by the State to support any invoice submitted by the Authority seeking reimbursement hereunder. Such reimbursement will be contingent upon the State receiving

from the Authority (and the Operator if the Operator constructs the track) a Bill of Sale, in a form acceptable to the State, conveying ownership of the track to the State. Upon delivery of such Bill of Sale to the State, such track connection will become part of the Rail Facilities leased by the State to the Authority and subject to all of the terms and conditions of this Agreement.

18. Maintenance. The Authority and the Operator will be responsible for any and all maintenance and repairs necessary for maintenance of the Rail Facilities to minimum Federal Railroad Administration ("FRA") Class 1 Track Safety Standards. In the event the State upgrades the Rail Facilities to FRA Class 2 Track Safety Standards, the Authority and the Operator will be responsible for any and all maintenance and repairs necessary for maintenance of the Rail Facilities to such minimum FRA Class 2 Track Safety Standards. The State will have no obligation or responsibility to perform any maintenance or repairs on the Rail Facilities. The Authority and the Operator will be responsible for the normal and regular work required to keep the Rail Facilities in a condition necessary to enable safe operations and will include, but not be limited to, tie, rail, culvert and bridge repairs, tamping and lining, surfacing, spikes, brush cutting, highway-rail grade crossing signal systems repairs, upgrades and maintenance, cross buck repairs, maintenance and replacement, on-track weed control, off-track weed control for the entire length and width of the right-of-way of the Rail Facilities (including applicable station grounds) as required by applicable State statute or local ordinances, highway-rail grade crossing maintenance, renewal or replacement and other necessary repairs and work. Such responsibility extends to all of the property leased by the Authority hereunder regardless of whether or not there are tracks or structures located thereon or whether or not rail service is provided thereon. The Authority and the Operator will not use any materials or equipment belonging to the State without the prior express written consent of the State. The Authority and the Operator will not grant nor permit any encroachments by third parties on the Rail Facilities that are not the subject of a written agreement as provided in Section 6 of this Agreement, and will promptly notify the State in writing of any such encroachments that may occur, and will cooperate and assist the Authority and the State in eliminating such encroachments.

19. Payment of Rent. The Authority will make an annual rent payment, "Rent" to the State based on traffic for each calendar year for the lease and use of the Rail Facilities equal to one percent (1.0%) of the gross revenues received by the Authority or the Operator from any rail freight service, or passenger service, provided on the Rail Facilities, including any Additions to the Rail Facilities. Revenue for any car storage is subject to negotiation for revenue split with the State. Revenues will be calculated each calendar year commencing January 1, 2016, and the Rent will be payable on May 1 of the next succeeding year, commencing May 1, 2017. A late payment fee will be assessed to annual payments not received by May 1 of each year, calculated at a rate of one and one-half percent (1.5%) per month.

    Further, Railroad Operating Right-of-Way taxes as assessed by the State of North Dakota will be paid by the Authority or the Operator pursuant to North Dakota statutes and regulations.

20. Term. Subject to Sections 11 and 21, this Agreement will continue in full force and effect for a period of ten (10) years from and after the Effective Date of this Agreement.

21. Termination for Fault. Should either the Authority or the State substantially fail to perform its obligations under this Agreement, and continue in such default for a period of sixty (60) days, the party not in default will have the right at its option, after first giving thirty (30) days' written notice to the party in default, and notwithstanding any waiver by the party giving notice of any prior breach, to terminate this Agreement. The parties further agree that inadequate or substandard performance by the Authority or the Operator will constitute a basis upon which the State may terminate this Agreement on thirty (30) days' notice to the Authority under this Section 21. Activities to be considered default include, but are not limited to: fraud, theft of State property, non-payment of Rent, misappropriation of funds, and lapse of insurance. Inadequate or substandard performance includes, but is not limited to, two or more instances of failure to cause movement of loaded or empty railcars within seven (7) days of release to the Authority or the Operator. Upon termination of this Agreement, the Authority will return the Rail Facilities to the State in the same condition, less normal wear and tear, and subject to the terms of this Agreement, as existed on the Effective Date of this Agreement,

DOT Legal: _____

except that for any section of the Rail Facilities upgraded by state and/or federal funding to FRA Class II standards, such section will be returned to the State in not less than that condition.

22. Audit. The Authority will keep detailed records, accounts, invoices, and supporting documentation pertaining to all costs paid for under this Agreement. Upon reasonable notice, the Authority will allow the State, through any authorized representative, to examine and copy all records, accounts, invoices, and supporting documents.

23. Operator's Right of First Refusal. So long as DMVW is the Authority's designated Operator of the Rail Facilities, if the State desires to sell all or any part of the Rail Facilities, the State will offer all or such part of the Rail Facilities to DMVW in writing upon the same terms and conditions of any bona fide written third party offer received by the State for said Rail Facilities. DMVW will have thirty (30) days to accept such offer in writing, and will have one hundred and twenty (120) days thereafter to close on the purchase of the Rail Facilities. If DMVW does not accept or close within these time periods, then the State will be free to accept the initial third party offer and complete the sale of the Rail Facilities, or any portion thereof, to that offeror. Upon such sale, the terms and conditions of this Agreement will continue in full force and effect for its remaining term, and will bind the State's successors and assigns. If the State received multiple bona fide third party offers, DMVW will be obligated to match the best (as determined by the State in its reasonable discretion) offer. Such right of first refusal will be included in any sublease of the Rail Facilities to DMVW.

24. Notice. Except as expressly provided otherwise, all notices or other communications and documentation required under this Agreement will be in writing and will be deemed duly given, if delivered in person, by telefacsimile, or by overnight commercial carrier to the address set forth below. Notices will be given by and to the contacts listed below, or such authorized designees as either party may from time to time designate in writing.

    For the State:

    Program Manager, Office of Air, Rail, and Transit
    South Dakota Department of Transportation
    700 Broadway Avenue East
    Pierre, South Dakota 57501-2586

    For the Authority:

    Chairperson (or any successor chairperson)
    Marshall County Regional Railroad Authority
    41996 106th Street
    Britton, South Dakota 57430

25. Complaint Resolution Procedure. In the event the Railroad Board or the South Dakota Department of Transportation, Office of Air, Rail, and Transit, receives a written complaint regarding the conduct of operations on the Rail Facilities, the Railroad Board may conduct a hearing to consider the allegations contained in the complaint. Reasonable prior notice of such hearing will be provided to all interested parties, including, but not limited to, the party filing the complaint, the Program Manager of the Office of Air, Rail, and Transit, the Authority, the Operator and any other railroad conducting operations on the Rail Facilities pursuant to a sublease or other agreement with the Authority. Any hearing held pursuant to this provision will be informal in nature and not subject to the requirements of SDCL 1-26, and acts amendatory thereto. All interested parties will be allowed to present oral and written information to the Railroad Board. After considering all information presented, the Railroad Board will issue a written decision, which will be binding as to this Agreement as if incorporated as a provision herein. The decision of the Railroad Board will be final and no party hereto will be entitled to any right of appeal from its decision.

    This complaint resolution procedure paragraph will be included in any sublease agreement that the Authority may enter into with any operator of all or any portion of the Rail Facilities while this Agreement is in effect.

DOT Legal: _____

26. Donation Agreement Amendment.

(a) That certain first Amendment to Agreement for Donation of Certain Assets, Rights and Obligations dated November 22, 2005 ("Donation Agreement Amendment"), by and between the State and BNSF, is attached to this Agreement as Exhibit B and incorporated by reference. The Authority agrees to be bound by the terms of said Donation Agreement Amendment.

(b) The Authority will indemnify, hold harmless, and defend the State against any breach by the Authority or any operator admitted by the Authority to use of all or any portion of the Britton Line of any obligations set forth in the Donation Agreement Amendment.

(c) The State and the Authority designate BNSF as a third-party beneficiary of this Section 26 with rights to enforce the terms of this Section 26 as against the Authority in the event of any breach of the terms by the Authority.

(d) The Authority will cause a clause substantially similar to this Section 26 to be incorporated in any sublease agreement with respect to the Rail Facilities, so that the Operator will agree to be bound by the terms of the Donation Agreement Amendment.

27. Severability. If any court of competent jurisdiction holds any provision of this Agreement unenforceable or invalid, such holding will not invalidate or render unenforceable any other provisions of this Agreement.

28. Entire Agreement. All other prior agreements, discussions, communications, and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and, except as specifically provided in this Agreement, this Agreement constitutes the entire agreement with respect to its subject matter. The terms of this Agreement have been arrived at after mutual negotiation and, therefore, the parties intend that the terms of this Agreement not be construed against any of the parties by reason of the fact that this Agreement was prepared by one of the parties.

29. Force Majeure. Performance (other than payment of Rent) pursuant to this Agreement and any sublease executed by the Authority is subject to events of force majeure, including accidents, acts of God, weather conditions, tortious acts of third parties, restrictions imposed by any government or governmental agency, or other similar events beyond the reasonable control of the parties. If performance under this Agreement or operability of the Rail Facilities is prevented by any cause described above, the State and the Authority will be under no obligation to restore the operability of the Rail Facilities to enable resumption of performance under this Agreement or any sublease agreement. If restoration is not made, then this Agreement will be terminated without penalty to either party.

30. Authority to Sign Agreement. The Authority has designated its Chairperson as the Authority's authorized representative and has empowered the Chairperson with the authority to sign this Agreement on behalf of the Authority. A copy of the Authority's Commission minutes or resolution authorizing the execution of this Agreement by the Chairperson as the Authority's authorized representative is attached hereto as Exhibit C.

DOT Legal: _____

This Agreement is binding upon the signatories not as individuals, but solely in their capacities as officials of their respective organizations and acknowledges proper action of the State and the Authority to enter into the same.

Marshall County Regional Railroad Authority

By: _____

Its: Chairperson

Date: _____

(Corporate Seal)

State of South Dakota
Department of Transportation

By: _____

Its: Program Manager
Office of Air, Rail, and Transit

Date: _____

Approved as to Form:

_____
Special Assistant Attorney General

ACKNOWLEDGMENTS FOLLOW

DOT Legal: _____

AUTHORITY ACKNOWLEDGMENT

STATE OF _____)
): SS
COUNTY OF _____)

On this the _____ day of _____, 20___, before me, _____, a Notary Public within and for said County and State, personally appeared _____, Chairperson of the Marshall County Regional Railroad Authority, known to me or satisfactorily proven to be the person who is described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

_____

NOTARY PUBLIC

(NOTARY SEAL)

My Commission Expires: _____

STATE ACKNOWLEDGMENT

STATE OF SOUTH DAKOTA)
): SS
COUNTY OF HUGHES)

On this the _____ day of _____, 20___, before me, _____, a Notary Public within and for said County and State, personally appeared Bruce Lindholm, Program Manager, Office of Air, Rail, and Transit, South Dakota Department of Transportation, known to me or satisfactorily proven to be the person who is described in the foregoing instrument, and acknowledged to me that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

_____

NOTARY PUBLIC

(NOTARY SEAL)

My Commission Expires: _____

DOT Legal: _____

SUBLEASE AGREEMENT BETWEEN
MARSHALL COUNTY REGIONAL RAILROAD AUTHORITY
AND
DAKOTA, MISSOURI VALLEY AND WESTERN RAILROAD, INC.

This Sublease Agreement ("Agreement") is made and entered into by and between the Marshall County Regional Railroad Authority, referred to in this Agreement as the "Authority," and the Dakota, Missouri Valley and Western Railroad, Inc., referred to in this Agreement as DMVW" or the "Operator." This Agreement is effective beginning January 1, 2016 (the "Effective Date").

BACKGROUND:

1. The State of South Dakota, acting by and through its Department of Transportation, referred to in this Agreement as the "State," is the owner of railroad property, including mainline tracks, sidings, and extra-width property facilities between Milepost 115.08 near Aberdeen, South Dakota, and Milepost 43.17 at Geneseo Junction, North Dakota, and including an additional 275 feet of track beyond Milepost 43.17 at Geneseo Junction referred to as "The Geneseo Junction Connection," and the "Britton Spur" between Britton, South Dakota and the connection with the mainline at Jarrett Junction, South Dakota, a total distance of approximately 76.26 miles in Brown and Marshall Counties, South Dakota and Sargent County, North Dakota, as shown on the map attached to this Agreement as Exhibit A, and collectively referred to in this Agreement as the "Rail Facilities."

2. Pursuant to the Agreement for Donation of Certain Assets, Rights, and Obligations between The Burlington Northern and Santa Fe Railway Company and the South Dakota Railroad Authority dated June 15, 2001, the State acquired the portion of the Rail Facilities between Milepost 115.08 near Aberdeen, South Dakota and Milepost 65.60 near Kidder, South Dakota (the "Britton Line").

3. Pursuant to the Sale Agreement between Rutland Line, Inc. and the South Dakota Rail Authority dated June 4, 2002 (the "Sale Agreement"), the State acquired the portion of the Rail Facilities between Milepost 43.17 at Geneseo Junction, North Dakota and Milepost 65.57 (rounded to Milepost 65.60) at the North Dakota/South Dakota border (the "Rutland Line").

4. The State and the Authority entered into a Lease Agreement dated August 8, 2002, which was subsequently amended and extended and subsequently superseded by a Lease Agreement dated March 16, 2007, and which was subsequently superseded by Lease Agreement dated January 1, 2016, under which the State, subject to the exclusions set forth in said agreement, leased the Rail Facilities to the Authority.

5. The parties want to enter into this Agreement for the sublease of the Rail Facilities by the Authority to the Operator on the terms and conditions stated in this Agreement.

THE AUTHORITY AND THE OPERATOR MUTUALLY AGREE AS FOLLOWS:

1. Purpose. The Authority subleases the Rail Facilities to the Operator, subject to the limitations set forth in this Agreement including, but not limited to, the right of Rutland Line, Inc. and its successors or assigns in Section 2(d) and (e) of the Sale Agreement to elect to provide rail freight service along the Rutland Line for traffic originating or terminating along the Rutland Line and excluding from such sublease any property which is currently subject to a lease by the State to a third party. All property leased to third parties is identified in records on file at the South Dakota Department of Transportation, 700 East Broadway Avenue, Pierre, South Dakota 57501-2586. In addition, the State may exclude additional property at any time during the term of this Agreement with the Authority's consent. The Authority has agreed with the State that the Authority will not unreasonably withhold its consent to exclude property not necessary for railroad purposes.

2. Condition of Rail Facilities. The Operator understands and agrees that the Rail Facilities are subleased in "AS IS" condition. The State and the Authority will have no responsibility to make any improvement, modification, rehabilitation, maintenance, or other change to the Rail Facilities for the purposes of this Agreement.

3. Representations and Warranties. The Operator accepts the Rail Facilities, "AS IS, WHERE IS" and "WITH ALL FAULTS." By signing this Agreement, the Operator acknowledges that it has inspected the Rail Facilities, including all improvements and structures. The Operator agrees that no representations have been made by the State or the Authority or relied upon by the Operator concerning the state or condition of the Rail Facilities.

4. Operating Rights. The Authority permits the Operator to use any and all of the Authority's rights and licenses in and to the Rail Facilities to the extent necessary for the purpose of providing rail freight service, passenger service, and railcar storage. Except as authorized in writing by the State and the Authority, passenger service will be limited to recreational motorcar use by individuals and organizations. If individual or organizational motorcar clubs are allowed by the Authority or the Operator to utilize any portion of the Rail Facilities subleased to the Operator under this Agreement, it will be the responsibility of the Authority and the Operator to obtain a certificate of insurance naming the State, the Authority, the Operator and any other operator or user of the Rail Facilities as additional insureds, prior to any motorcar event; and, further, the Authority and the Operator will obtain from the individual recreational motorcar enthusiast or organization, as the case may be, an indemnification agreement to be executed by the person or entity in charge of the motorcar event, indemnifying the State and the Authority from any claim or liability arising out of the event, and will provide copies of said indemnification agreements to the State prior to any motorcar travel on the Rail Facilities. The rights granted to the Operator under this Agreement relate solely to the provision of rail freight service, railcar storage and authorized passenger service on the Rail Facilities. The Operator may not use or allow the Rail Facilities to be used for any other purpose without the prior written authorization of the Authority and the State. The Operator will have use of the Claremont Storage Shed and station grounds leased by the Authority from the State for maintenance and operational requirements subject to approval from the Authority and the State.

   The Operator will have the exclusive right to provide rail freight service on/over the entire Rail Facilities for any freight traffic that originates or terminates at any point along the Britton Line. The Operator will have a non-exclusive right to provide rail freight service on/over the entire Rail Facilities for any freight traffic that originates or terminates at any point along the Rutland Line. The Operator will have the non-exclusive right to provide rail freight service on/over the entire Rail Facilities for any freight traffic that does not originate or terminate at any point along the entire Rail Facilities.

   The Operator acknowledges and agrees that the State may grant unrestricted trackage rights on/over all or a portion of the Rail Facilities to a third party carrier for any freight traffic that does not originate or terminate at any point along the entire Rail Facilities, and may grant local trackage rights to a third party carrier to serve a new industry that locates along the Rail Facilities.

   It is further understood that the Operator or a third-party carrier appointed by the State may utilize the State's interchange/trackage rights via Aberdeen, South Dakota and Geneseo Junction, North Dakota, if any, for furtherance of said rail freight traffic beyond the Rail Facilities. The Operator or said third-party rail carrier may not exceed or otherwise violate the terms of the State's interchange/trackage rights.

   Any rail traffic moving via any segment of the South Dakota Owned Rail System or the Rapid City, Pierre & Eastern Railroad, Inc., using the Geneseo Line Junction Gateway as access to the Canadian Pacific Rail System or as access to the BNSF Railway Company ("BNSF"), formerly The Burlington Northern and Santa Fe Railway Company, will have terms and conditions negotiated between the Authority or the Operator or operators and the carriers involved for those movements covering rates, routes and divisions. Additionally, an appropriate and commercially reasonable joint trackage rights agreement will be negotiated between the Authority, the Operator, the South Dakota Department of

Transportation (Local Transportation Program) and any third party carrier granted trackage rights on all or any portion of the Rail Facilities covering, among other items, joint line definition, per train-mile payment to such Operator and/or the Authority, operations, maintenance, derailment, expenses, liability allocation and claim and damage settlement.

The Operator and/or any third party carrier with which it connects will have the non-exclusive authority to establish and publish rates subject to any legal requirements of the Surface Transportation Board ("STB") or other regulatory requirements, and will bill and collect its own charges for all rail transportation over the Rail Facilities.

The Operator will provide railcars for any freight traffic that originates or terminates at any point along the Britton Line. The Operator will provide railcars for any freight traffic that the Operator originates or terminates at any point along the Rutland Line.

It is in the State's best interest that the Rail Facilities be utilized by as many shippers and receivers as possible for the shipment and receipt of commodities via rail. Upon the request of a rail shipper or a prospective rail shipper, the Operator will sublease to such shipper or prospective shipper, for a term of 10 years in duration, a portion of the property comprising the Rail Facilities upon which such shipper or prospective shipper, at its cost and expense, will construct a track or tracks for its use. The sublease agreement will be subject to the prior approval of the Authority and the State. Also, the Operator will require such shipper or prospective shipper to indemnify the State and the Authority from suits, actions and claims on the same basis as set forth in Section 9 below. The sublease agreement will also provide that in the event that no track is constructed on the subleased parcel within two (2) years of the date of the sublease agreement, the sublease will automatically terminate.

The Operator agrees that all freight traffic that either originates or terminates at any point on, along, connected to, or which may become connected to the Rutland Line will be interchanged only to the Red River Valley & Western Railroad Company ("RRVW"), as successor in interest to Rutland Line, Inc., at Geneseo Junction, North Dakota, for furtherance beyond by RRVW or its successors or assigns for interchange with BNSF. The reference to "any point, on, along, connected to, or which may become connected to, the Rutland Line" will mean and include existing or future rail-served facilities adjacent, connected to, or capable of connection to, the Rutland Line by spur track, side track, industry track or branchline extending directly off of the Rutland Line, provided however, that any point on the segment of the Rail Facilities south of Milepost 65.57 that is not otherwise connected to the Rutland Line by spur, side, or industry track or branchline, will not be included as a point "connected" to the Rutland Line for purposes of this section, it being understood that nothing in this Agreement will preclude RRVW or BNSF from establishing, subject to any regulatory approval, the rates either charges for any rail freight service provided by them beyond the Rutland Line for traffic that either originates or terminates at any point on, along, connected to, or which may become connected to the Rutland Line.

This Agreement is subject to the State's prior written consent. This Agreement is expressly made subject to all of the terms, conditions, and limitations contained in the Lease Agreement between the Authority and the State dated January 1, 2016.

5. Administration of Rail Facilities. Notwithstanding any provision of this Agreement, or the Lease Agreement between the State and the Authority, the State will retain sole responsibility for the management of State-owned facilities and equipment located on the Rail Facilities not required for railroad purposes. The State may grant leases, easements, licenses, and all other similar property rights, on the Rail Facilities for non-rail purposes, including, but not limited to, placement on the Rail Facilities of utilities, fiber optic cables, pipelines, at-grade crossings and grade separations, and other non-rail related facilities and businesses, provided that such leases, easements, and licenses do not unreasonably interfere with the Operator's rail operations. The State will be entitled to all revenues derived from such grants of property rights.

6. Governmental Approval. The Operator, at no cost to the Authority or the State, will prepare and file such documents as may be required to secure approval or exemption from the STB for its sublease and operation of the Rail Facilities sufficiently, in advance of the Effective Date of this Agreement, for such approval or exemption to become effective on or before the Effective Date. The Operator will permit the Authority and the State to review prior to filing all documents proposed by the Operator to be filed with the STB for such approval or exemption.

7. Common Carrier Obligations. The Operator will assume and carry out the common carrier obligation related to the operation of the Rail Facilities for the term of this Agreement.

8. Liability of Operator. The Operator will indemnify the Authority and the State, and their respective individual members, subdivisions, representatives, officers, employees, successors, and assigns, from all suits, actions, or claims of any character pertaining to any death, injury, or damage received or sustained by any person or persons whomsoever (including, but not limited to, State and Authority employees), and any property whatsoever (including, but not limited to, State or Authority-owned property), which arises out of or as a result of entering into this Agreement or the rail siding leases referenced in Section 4, except when such death, injury, or damage is caused by the sole negligence of the State or the Authority. The Operator will cause all lessees of rail sidings to indemnify the State and the Authority from suits, actions, or claims on the same basis as set forth in this Section 8.

9. Laws to be Observed. The Operator will keep fully informed of all federal, state, and local laws, rules, ordinances, regulations, injunctions, and all final orders and decrees of bodies of tribunals having any jurisdiction or authority, which in any way affect the performance of this Agreement, including without limitation any laws, rules, ordinances, regulations, orders, or decrees identified in this Agreement. The Operator will at all times observe and comply with all such laws, rules, ordinances, regulations, and all final orders and decrees. The Operator will indemnify the State, the Authority, and their respective officers, employees, and representatives against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, injunction, or final order or decree.

10. Insurance. The Operator will maintain a Commercial General form of insurance covering liability in connection with any of the Operator's activities or operations on or near the Rail Facilities including, but not limited to, Public Liability, Personal Injury, and Property Damage; Federal Employers Liability Act Liability (or, if Workers' Compensation applies, Workers' Compensation coverage as required, or as optional, under applicable state law); said insurance must contain a specific waiver of the insurance company's subrogation rights against the State and RRVW; Bill of Lading and Foreign Rolling Stock Liability; and Contractual Liability; with such limits (consistent with the terms set forth below), deductibles and exclusions as the State may agree are satisfactory, provided however, that: (i) such limits will not be less than $5 million per occurrence; and $10 million in the aggregate; and (ii) policy terms will not exclude or limit coverage where activities or operations are on or near railroad tracks. The State, the Authority and RRVW must be named as additional insureds on such liability insurance policies. Any coverage afforded to the State, the Authority and RRVW as additional insureds will apply as primary insurance of the State, the Authority and RRVW, and will not be deemed to be excess to any insurance issued in the name of the State, the Authority and RRVW. The Operator must obtain such liability insurance from an insurance company licensed to do business in the State of South Dakota and the State of North Dakota, and possessing a current Best's Insurance Guide Rating of A and Class X, or better.

    The Operator will furnish to the State, the Authority and RRVW, a Certificate or Certificates of Insurance satisfactory to the State and RRVW, certifying the issuance to the Operator of the policies of insurance providing the types of insurance and limits of liability prescribed above, and stating that the Authority, the State and RRVW will be given not less than thirty (30) days' written notice by U.S. Certified mail (postage prepaid), prior to any material change, substitution, or cancellation of such insurance policies in advance of normal expiration dates. Cancellation or expiration of any such insurance policies will not limit or otherwise preclude the State or the Authority from recovery for any liability arising under this Agreement.

If the Operator does not maintain the required insurance coverage, the Authority may immediately terminate this Agreement, without notice to the Operator and without opportunity to cure such default. The Operator will supply the State, the Authority and RRVW with copies of its insurance policies and any amendments within ten (10) days of receiving a request for the same from the State or the Authority. The Operator acknowledges that the purchase of insurance as required by this Paragraph will not in any way limit the liability of the Operator. In addition, the Authority or the Operator will supply RRVW with copies of its insurance policies and any amendments on January 1 of each year.

11. Assignment. The Operator will not assign its rights or delegate its duties under this Agreement or any part of this Agreement without the Authority's prior written consent. An approved assignment, including assignments occurring through operator contracts, will not relieve the Operator of its primary responsibility to the Authority.

12. Amendment. No term or provision of this Agreement may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge, or termination is sought; provided however, when an emergency situation arises, changes in this Agreement may be made orally by authorized representatives of both parties by mutual agreement subject to immediate confirmation by telefacsimile or other delivered writing.

13. State and Authority Inspection. The Authority and the State or a duly authorized representative of either, upon reasonable notice to the Operator or its duly authorized representative, reserve the right at all times to perform any and all inspections over and across the Rail Facilities, including rail trackage, for the purpose of verifying compliance with the terms and conditions of this Agreement and the Lease Agreement executed previously between the State and the Authority. The Operator will correct any deficiency noted during each rail inspection within the time frames set by the State and the Authority. The State/Authority inspections or failure to conduct such inspections will not relieve the Operator of the responsibility to properly maintain the Rail Facilities.

14. Responsibility for Rehabilitation. The State and the Authority will have no responsibility for rehabilitating the Rail Facilities.

15. Additions to Rail Facilities. The term "Addition(s)" as used in this Agreement means capital improvements which are in addition to the Rail Facilities. The Authority grants to the Operator the right to make such Addition(s) to the Rail Facilities as the Operator may require to permit rail freight service, passenger service, or railcar storage on the Rail Facilities as permitted under this Agreement, at the Operator's sole expense. The Operator will own and have the right to remove any Addition outside of the actual mainline and siding track structures, only if the Addition can be removed without causing the Rail Facilities to be less serviceable than before said Addition was made. Any Addition which cannot be removed without diminishing serviceability will become the State's property and will become a part of the Rail Facilities. Under no circumstances may any Addition placed into the actual mainline or siding track structures be removed at the termination of this Agreement, such Addition will remain the property of the State.

16. Jarret Junction Connection. At the request of the Authority, the Operator, at its initial cost and expense, subject to reimbursement by the Authority as provided herein, will construct a track connection in the southwest quadrant of the spur track from Britton, South Dakota and the mainline of the Britton Line at Jarrett Junction, South Dakota. Such track construction will be carried out in accordance with the plans, specifications, drawings and budget (the "Approved Plans") as agreed upon by the State, the Authority and the Operator, and will be completed not later than December 31, 2016. The Authority will be responsible, at its sole cost and expense, for acquiring the necessary right-of-way for such track connection. Upon certification by the State of the completion of the construction of such track connection in accordance with the Approved Plans, the Authority will reimburse the Operator in an amount not to exceed Six Hundred Thousand Dollars ($600,000.00) for the cost of constructing such track connection. The Operator will be responsible for providing to the State and the Authority such supporting documentation as required by the State and the Authority to

support any invoice submitted by the Operator seeking reimbursement hereunder. Such reimbursement will be contingent upon the State receiving from the Authority and the Operator a Bill of Sale, in a form acceptable to the State, conveying ownership of the track to the State. Upon delivery of such Bill of Sale to the State, such track connection will become part of the Rail Facilities leased by the State to the Authority and subleased by the Authority to the Operator and subject to all of the terms and conditions of this Agreement.

17. Maintenance. The Operator will be responsible for any and all maintenance and repairs necessary for maintenance of the Rail Facilities to minimum Federal Railroad Administration ("FRA") Class 1 Track Safety Standards. In the event the State upgrades the Rail Facilities to FRA Class 2 Track Safety Standards, the Operator will be responsible for any and all maintenance and repairs necessary for the maintenance of the Rail Facilities to such minimum FRA Class 2 Track Safety Standards. The State and the Authority will have no obligation or responsibility to perform any maintenance or repairs on the Rail Facilities. The Operator will be responsible for the normal and regular work required to keep the Rail Facilities in a condition necessary to enable safe operations and will include, but not be limited to, tie, rail, culvert and bridge repairs, tamping and lining, surfacing, spikes, brush cutting, highway-rail grade crossing signal systems repairs, upgrades and maintenance, cross buck repairs, maintenance and replacement, on-track weed control, off-track weed control for the entire length and width of the right-of-way of the Rail Facilities (including applicable station grounds) as required by applicable State statute or local ordinances, highway-rail grade crossing maintenance, renewal or replacement and other necessary repairs and work. Such responsibility extends to all of the property leased by the Authority hereunder regardless of whether or not there are tracks or structures located thereon or whether or not rail service is provided thereon. The Authority or the Operator will not use any materials or equipment belonging to the Authority or the State without the prior express written consent of the Authority or the State. The Operator will not grant nor permit any encroachments by third parties on the Rail Facilities that are not the subject of a written agreement as provided in Section 5 of this Agreement and will promptly notify the Authority and the State in writing of any such encroachments that may occur, and will cooperate and assist the Authority and the State in eliminating such encroachments.

18. Payment of Rent. The Operator will make an annual rent payment "Rent," to the Authority based on traffic for each calendar year for the lease and use of the Rail Facilities, equal to one and one-half percent (1.5%) of the gross revenues received by the Operator from any rail freight service, or passenger service, provided on the Rail Facilities, including any Additions to the Rail Facilities. Revenue for any car storage is subject to negotiation for revenue split with the Authority. Revenues will be calculated each calendar year commencing January 1, 2016, and the Rent will be payable on May 1 of the next succeeding year, commencing May 1, 2017. A late payment fee will be assessed to annual payments not received by May 1 of each year, calculated at a rate of one and one-half percent (1.5%) per month.

    Further, Railroad Operating Right-of-Way taxes as assessed by the State of North Dakota or Sargent County, North Dakota will be paid by the Operator pursuant to North Dakota statutes and regulations.

19. Term. Subject to Sections 10 and 20, this Agreement will continue in full force and effect for a period of ten (10) years from and after the Effective Date of this Agreement.

20. Termination for Fault. Should either the Operator or the Authority substantially fail to perform its obligations under this Agreement, and continue in such default for a period of sixty (60) days, the party not in default will have the right at its option, after first giving thirty (30) days' written notice to the party in default, and notwithstanding any waiver by the party giving notice of any prior breach, to terminate this Agreement. The parties further agree that inadequate or substandard performance by the Operator will constitute a basis upon which the Authority may terminate this Agreement on twenty (20) days' notice to the Operator under this Section 20. Activities to be considered default include, but are not limited to: fraud, theft of State property, non-payment of Rent, misappropriation of funds, and lapse of insurance. Inadequate or substandard performance includes, but is not limited to, two or more instances of failure to cause movement of loaded or empty railcars within seven (7) days of

release to the Operator. Upon termination of this Agreement, the Operator will return the Rail Facilities to the Authority in the same condition, less normal wear and tear that existed on the Effective Dates of this Agreement, except that for any section of the Rail Facilities upgraded by state and/or federal funding to FRA Class II standards, such section will be returned to the Authority in not less than that condition.

21. Audit. The Operator will keep detailed records, accounts, invoices, and supporting documentation pertaining to all costs paid for under this Agreement. Upon reasonable notice, the Operator will allow the State and the Authority, through any authorized representative to examine and copy all records, accounts, invoices, and supporting documents.

22. Operator's Right of First Refusal. So long as the Operator remains as the Authority's designated operator of the Rail Facilities, if the State desires to sell all or any part of the Rail Facilities, the State will offer all or such part of the Rail Facilities to the Operator in writing upon the same terms and conditions of any bona fide written third party offer received by the State for said Rail Facilities. The Operator will have thirty (30) days to accept such offer in writing, and will have one hundred and twenty (120) days thereafter to close on the purchase of the Rail Facilities. If the Operator does not accept or close within these time periods, then the State will be free to accept the initial third party offer and complete the sale of the Rail Facilities, or any portion thereof, to that offeror. Upon such sale, the terms and conditions of this Agreement will continue in full force and effect for its remaining term, and will bind the State's successors and assigns. If the State received multiple bona fide third party offers, the Operator will be obligated to match the best (as determined by the State in its reasonable discretion) offer.

23. Notice. Except as expressly provided otherwise, all notices or other communications or documentation required under this Agreement will be in writing and will be deemed duly given, if delivered in person, by telefacsimile, or by overnight commercial carrier, to the address set forth below. Notices will be given by and to the contacts listed below, or such authorized designees as either party may from time to time designate in writing.

    For the Authority:

    Chairperson (or any successor chairperson)
    Marshall County Regional Railroad Authority
    41996 106th Street
    Britton, South Dakota 57430

    For the Operator:

    President (or any successor)
    Dakota, Missouri Valley and Western Railroad, Inc.
    1131 South 22nd Street
    Bismarck, North Dakota 58504

    With a copy to:

    Program Manager, Office of Air, Rail, and Transit
    South Dakota Department of Transportation
    700 Broadway Avenue East
    Pierre, South Dakota 57501-2586

24. Complaint Resolution Procedure. In the event the Railroad Board or the South Dakota Office of Air, Rail, and Transit receives a written complaint regarding the conduct of operations on the Rail Facilities, the Railroad Board may conduct a hearing to consider the allegations contained in the complaint. Reasonable prior notice of such hearing will be provided to all interested parties, including, but not limited to, the party filing the complaint, the Program Manager of the Office of Air, Rail and

Transit, the Authority, the Operator and any other railroad conducting operations on the Rail Facilities pursuant to sublease or other agreement with the Authority. Any hearing held pursuant to this provision will be informal in nature and not subject to the requirements of SDCL 1-26, and acts amendatory thereto. All interested parties will be allowed to present oral and written information to the Railroad Board. After considering all information presented, the Railroad Board will issue a written decision, which will be binding as to this Agreement as if incorporated as a provision herein. The decision of the Railroad Board will be final and no party hereto will be entitled to any right of appeal from its decision.

25. Donation Agreement Amendment.

(a) That certain first Amendment to Agreement for Donation of Certain Assets, Rights and Obligations dated November 22, 2005 ("Donation Agreement Amendment"), by and between the State and BNSF, is attached to this Agreement as Exhibit B and incorporated by reference herein, and Operator agrees to be bound by the terms of said Donation Agreement Amendment.

(b) The Operator will indemnify, hold harmless, and defend the Authority and the State against any breach by the Operator of any obligations set forth in the Donation Agreement Amendment.

(c) The Operator acknowledges that the State and the Authority have designated BNSF as a third-party beneficiary of this Section 25 with rights to enforce the terms of this Section 25 as against the Operator in the event of any breach of the terms by the Operator.

26. Severability. If any court of competent jurisdiction holds any provision of this Agreement unenforceable or invalid, such holding will not invalidate or render unenforceable any other provisions of this Agreement.

27. Entire Agreement. All other prior agreements, discussions, communications, and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and, except as specifically provided in this Agreement, this Agreement constitutes the entire agreement with respect to its subject matter. The terms of this Agreement have been arrived at after mutual negotiation and, therefore, the parties intend that the terms of this Agreement not be construed against any of the parties by reason of the fact that the Agreement was prepared by one of the parties.

28. Force Majeure. Performance (other than payment of Rent) pursuant to this Agreement is subject to events of force majeure, including accidents, acts of God, weather conditions, tortuous acts of third parties, restrictions imposed by any government or governmental agency, or other similar events beyond the reasonable control of the parties. If performance under this Agreement or operability of the Rail Facilities is prevented by any cause described above, the State and the Authority will be under no obligation to restore the operability of the Rail Facilities to enable resumption of performance under this Agreement. If restoration is not made, then this Agreement will be terminated without penalty to either party.

29. Authority to Sign Agreement on behalf of the Authority. The Authority has designated its Chairperson as the Authority's authorized representative and has empowered the Chairperson with the authority to sign this Agreement on behalf of the Authority. A copy of the Authority's Commission minutes or resolution authorizing the execution of this Agreement by the Chairperson as the Authority's authorized representative is attached to this Agreement as Exhibit C.

30. Authority to Sign Agreement on behalf of the Operator. The Operator has designated its President as the Operator's authorized representative and has empowered the President with the authority to sign this Agreement on behalf of the Operator. A copy of the Operator's corporate minutes or board resolution authorizing the execution of this Agreement by the President as the Operator's authorized representative is attached hereto as Exhibit D.

This Agreement is binding upon the signatories not as individuals, but solely in their capacities as officials of their respective organizations and acknowledges proper action of the State and the Authority to enter into the same.

Dakota, Missouri Valley and Western Railroad, Inc.

By: _____

Its: President

Date: _____

(Corporate Seal)

Marshall County Regional Railroad Authority

By: _____

Its: Chairperson

Date: _____

(Corporate Seal)

ACKNOWLEDGMENTS FOLLOW

Consent to enter into this Agreement given this _____ day of _____, 20_____.

State of South Dakota
Department of Transportation

By: _____

Its: Program Manager
Office of Air, Rail, and Transit

Approved as to Form:

_____
Special Assistant Attorney General

OPERATOR ACKNOWLEDGMENT

STATE OF _____)
): SS
COUNTY OF _____)

On this the ___ day of _____, 20___, before me, _____, a Notary Public within and for said County and State, personally appeared _____, President of the Dakota, Missouri Valley and Western Railroad, Inc., known to me or satisfactorily proven to be the person who is described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

_____

NOTARY PUBLIC

(NOTARY SEAL)

My Commission Expires: _____

AUTHORITY ACKNOWLEDGMENT

STATE OF _____)
): SS
COUNTY OF _____)

On this the ___ day of _____, 20___, before me, _____, a Notary Public within and for said County and State, personally appeared _____, Chairperson of the Marshall County Regional Railroad Authority, known to me or satisfactorily proven to be the person who is described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

_____

NOTARY PUBLIC

(NOTARY SEAL)

My Commission Expires: _____

Department of Transportation

Division of Finance & Management
Air, Rail and Transit
700 East Broadway Avenue
Pierre, South Dakota 57501-2586
OFFICE: 605/773-3574
FAX: 605/773-3921

MEMORANDUM

Date: January 14, 2016

To: South Dakota State Railroad Board

From: Darin Bergquist, Secretary, Department of Transportation

Subject: Approval of surplus railroad bridge timber bid

The bids for the surplus railroad bridge timber will be opened January 19, 2016. The Department will provide the bid tabs to the Board for evaluation and award approval.

Department of Transportation

Division of Finance & Management
Air, Rail and Transit
700 East Broadway Avenue
Pierre, South Dakota 57501-2586
OFFICE: 605/773-3574
FAX: 605/773-3921

MEMORANDUM

Date: January 14, 2016

To: South Dakota State Railroad Board

From: Darin Bergquist, Secretary, Department of Transportation

Subject: Reliance Rail Option to Lease

On July 15, 2015, the Railroad Board authorized the department to enter into a lease with Reliance Rail, LLC for state-owned rail property in Reliance. Reliance Rail would prefer to enter into an option to lease rather than an actual lease at this time. The pertinent terms of the option to lease are as follows:

1. Term of option: from the date of execution until August 1, 2018;
2. Cost of option: $800.000 due at the time of execution and each year thereafter;
3. Property subject to option to lease: railroad right of way on the south side of the MRC line in Reliance as shown on enclosed diagram;
4. Miscellaneous terms: If Reliance Rail exercises the option to the lease, the lease cost would be $800.00 per year. The lease term would be 10 years. The lease would automatically renew for successive ten-year periods unless terminated by one of the parties at least 60 days before the end of the lease term. Reliance Rail would be responsible for all costs associated with removing the existing siding, disposal of salvage and constructing a new industrial siding. The department would retain ownership of the leased land but Reliance Rail would own the newly-constructed siding and have the right to remove the new siding if the removal could be accomplished without causing damage to the department's remaining rail facilities.

Connecting South Dakota and the Nation

Department of Transportation

Division of Finance & Management
Air, Rail and Transit
700 East Broadway Avenue
Pierre, South Dakota 57501-2586
OFFICE: 605/773-3574
FAX: 605/773-3921

MEMORANDUM

Date: January 14, 2016

To: South Dakota State Railroad Board

From: Darin Bergquist, Secretary, Department of Transportation

Subject: A&R Land Services, Inc. amendment

The Department previously entered into an agreement with A&R Land Services, Inc. to provide right of way services, which includes survey work, validating legal descriptions, and providing title opinions for approximately 30 acres of extra-width property located in Hawarden, Iowa. This property is the subject of a property dispute. A private individual is claiming this property as his own, while the Department believes this property belongs to the State of South Dakota.

At the time the Department entered into the agreement with A&R Land Services, Inc., for these services, the Department did not seek Board approval because the Department's process for administering Railroad Administration funds did not require Board approval, The Department has since changed its process regarding Railroad Administration funds and we are now requesting approval for this project.

The Department is requesting approval from the Board to amend the existing agreement to add an additional $15,000 in Railroad Administration funds to resolve the ownership dispute of this property.